



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

5636 Southern Boulevard
Virginia Beach, VA 23462
(757) 518-2000 Fax (757) 518-2103
www.deq.virginia.gov

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

OCEANA SALVAGE, INC.

Registration No. VAR050409

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Oceana Salvage, Inc. for the purpose of resolving certain alleged violations of environmental law and/or regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Regulation” means 9 VAC 25-151-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity.
7. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

8. "Permit" means VPDES General Permit for Storm Water Discharges Associated with Industrial Activity No. VAR05, which became effective on July 1, 2004 and expires on June 30, 2009.

SECTION C: Finding of Facts and Conclusions of Law

1. Oceana Salvage, Inc. ("Oceana") owns and operates an auto salvage and scrap material recycling facility located at 1040 Oceana Boulevard, Virginia Beach ("facility"). Oceana is subject to the Permit through Registration No. VAR050409, which was issued July 30, 2004 and expires when the Permit expires.
2. On April 13, 2005, DEQ inspection staff ("Staff") conducted a routine inspection of the facility and documented the following: (a) quarterly visual examinations of storm water quality were not performed and/or documented; (b) the comprehensive site compliance evaluation ("CSCE") for calendar year 2004 was not available for review at the time of inspection as required by the storm water pollution prevention plan ("SWP3"); (c) required employee training was not performed; (d) required routine site inspections were not performed and/or documented; (e) exposed waste materials were stored on the ground with no protective cover or shelter, including several uncovered buckets containing either oil or anti-freeze, used automobile batteries and gasoline tanks stored within a pile of tires next to the crusher; (f) exposed oily automobile parts were observed in two of the dismantling areas; (g) a small pool of oil was observed under the car crusher which was leaking due to a broken containment structure surrounding the car crusher; (h) woodchips under the car crusher used for absorption were saturated with oil; and (i) petroleum contaminated soils were observed adjacent to a former containment structure.
3. Part I.A.1.a.(1) of the Permit requires Oceana to conduct and document a quarterly visual examination of the storm water discharge from each outfall. The Department alleges that Oceana violated the Permit by failing to conduct and document the quarterly visual examination of the storm water quality at its outfall 001.
4. Part III.B.6.b.(1)(a) of the Permit requires Oceana to implement good housekeeping practices at the facility to minimize the impacts of industrial activities upon the receiving stream. The Department alleges that Oceana violated the Permit by failing to implement good housekeeping practices at the facility as observed by Staff during the routine site inspection conducted on April 13, 2005.
5. Part III.B.6.b.(1)(b) of the Permit specifies that where practicable industrial materials and activities should be protected by a storm-resistant shelter to prevent exposure to rain, snow and/or runoff. The Department alleges that Oceana violated the Permit by failing to minimize exposure of industrial materials and

activities by storing industrial materials without protective cover or shelter as observed by Staff during the routine site inspection conducted on April 13, 2005.

6. Part III.B.6.b.(1)(e) of the Permit requires Oceana to perform routine facility inspections at least quarterly and maintain records of inspections in accordance with the SWP3. The Department alleges that Oceana violated its Permit by failing to conduct and/or document routine facility inspections in accordance with the SWP3.
7. Part III.B.6.b.(1)(f) of the Permit specifies that Oceana is required to provide training to all employees who work in areas where industrial materials or activities are exposed to storm water and are responsible for implementing activities identified in the SWP3. The Department alleges that Oceana violated the Permit by failing to provide the required training to its employees.
8. Part III.E of the Permit requires Oceana to conduct and document a CSCE no less than once per year and make it available to the Department upon request. The Department alleges that Oceana violated the Permit by failing to conduct and/or document the CSCE for calendar year 2004 for its facility.
9. On May 3, 2005, DEQ issued Notice of Violation ("NOV") W2005-04-T-0003 advising Oceana of the referenced inspection report, which included the observations referenced in paragraph two of this Order.
10. On May 18, 2005, DEQ received a response to the NOV from Oceana indicating that efforts have been made to clean up the site.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted by Va. Code § 62.1-44.15(8a) and (8d), orders Oceana. In addition, the Board orders Oceana, and Oceana voluntarily agrees to pay a civil charge of \$3,500 in settlement of the alleged violations cited in this Order. Payment of the civil charge shall be made in accordance with the following schedule:

1. Within 30 days of the effective date of this Order, Oceana shall submit a check to the Department in the amount of \$1,000.
2. Following the initial payment of \$1,000 as described in paragraph D.1. of this Order, Oceana shall submit a check to the Department in the amount of \$1,000 within 60 days of the effective date of this Order.
3. Following the payment of \$1,000 as described in paragraph D.2. of this Order, Oceana shall submit a check to the Department in the amount of \$1,500 within 90 days of the effective date of this Order.

4. If the Department fails to receive a payment as outlined in paragraphs D.1, D.2, and D.3. of this Order, the payment shall be considered late. If any payment is late, the Department reserves the right to demand in writing, full payment of the entire balance owed by Oceana under this Order. Oceana shall pay such balance within fifteen days of receiving such a demand by the Department. Any allowance by the Department of a late payment by Oceana shall not serve as a waiver of the Department's reserved right to accelerate payment of the entire balance upon subsequent late payment.
5. The payment schedule outlined in paragraphs D.1, D.2, and D.3. of this Order does not serve to preclude Oceana from submitting advanced payment of the civil charge at any given time.

Each payment shall include Oceana's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Oceana, for good cause shown by Oceana, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice(s) of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Oceana neither admits nor denies the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Oceana consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Oceana declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Oceana to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Oceana shall be responsible for failure to comply with any of the terms and conditions by this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Oceana shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Oceana shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Oceana intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Oceana. Notwithstanding the foregoing, Oceana agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Oceana. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Oceana from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Oceana voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16th day of March, 2009. ⁷⁴⁰

Francis L. Daniel

for DAVID K. PAYLOR

Francis L. Daniel, Tidewater Regional Director
for Robert G. Burnley, Director
Department of Environmental Quality

Oceana Salvage, Inc. voluntarily agrees to the issuance of this Order.

By: Julia A. Malton

Date: December 30, 2008

Commonwealth of Virginia

City/County of Virginia Beach

The foregoing document was signed and acknowledged before me this 3rd day of

December, 2005, by Julia A. Malton, who is
(name)

President of Oceana Salvage, Inc., on behalf of Oceana.
(title)

[Signature]
Notary Public

My commission expires: September 30, 2008